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**NOV 13 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
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PLEASE REPLY TO  
JOHN WELLS KING  
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E-MAIL: JKING@GSBLAW.COM

November 13, 2001

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-A325  
Washington, DC 20554

Re: MM Docket No. 01-248  
RM-10241  
Amendment of Section 73.202(b)  
Dos Palos and Chualar, California

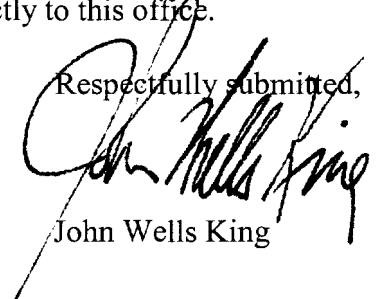
Subject: COMMENTS AND COUNTERPROPOSAL

Dear Ms. Salas:

On behalf of Coyote Communications, Inc., I transmit herewith the original and four copies of its Comments and Counterproposal of Coyote Communications, Inc., in the above-referenced FM Rule Making proceeding.

Kindly communicate any questions directly to this office.

Respectfully submitted,

  
John Wells King

JWK:ab  
Enclosure  
cc: Dan Alpert, Esquire

014

## NOV 13 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

<sup>1</sup> The comment date established in the NPRM, Monday, November 12, 2001, was the federal government observance of Veterans Day. Under Section 1.4(j) of the Commission's rules, the comment date is therefore the next business day, and accordingly, these comments are timely filed.

Accordingly, Coyote tenders this counterproposal for consideration herein:

<i>Community</i>	<i>Channel No.</i>	
	<i>Present</i>	<i>Proposed</i>
Dos Palos, California	240A	240A
Big Sur, California	-----	240A

The Commission wisely recognized infirmities in the Chualar proposal. It is of a lower allotment priority (Priority 4) than was the Dos Palos (Priority 3) allotment. A Chualar allotment would remove a sole service from a larger community in order to establish a second service in a smaller community.

Moreover, Chualar is not a community for purposes of fair, efficient and equitable distribution of radio service under Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b).

Even so, service at Chualar would provide a city-grade (70 dBu) signal over more than fifty percent (50%) of the Salinas-Monterey Urbanized Area. For this reason, further consideration of the Chualar proposal requires the proponent to make a *Tuck* showing.

KNTO should be held to the commitment it made to Dos Palos only last year. Moreover, waiver of the Commission's policy on removal of sole existing service is not warranted.

**Counterproposal: Allotment of Channel 240A at Big Sur and Dos Palos**

Attached hereto as Exhibit A and incorporated herein by reference is the Engineering Statement of D. Scott Turpie, of the consulting radio engineering firm of Lohnes & Culver, in which he establishes that Channel 240A can be allotted to the community of Big Sur in accordance with the Commission's FM minimum distance

separations and transmitter location requirements. Mr. Turpie specifies a reference location of North Latitude 36° 15' 26" and West Longitude 121° 49' 28" (NAD 27). It is 2.3 km west of Big Sur due to a site restriction with the Dos Palos co-channel authorization for KNTD. With the exception of the mutually exclusive proposal to reallocate Channel 240A from Dos Palos to Chualar, the reference location is fully-spaced with all FM stations and allotments. The community of Big Sur falls squarely within the theoretical 70 dBu contour of a Class A FM station operating at maximum power and antenna height from the reference location.

The proposal to allocate Channel 240A at Big Sur is not mutually exclusive with the existing allotment of Channel 240A at Dos Palos. The spacing between the allotments is 131.47 km, which exceeds the required minimum distance separation of 115 km. The reference location for Big Sur is separated from the location for the KNTD authorization by 114.62 km, which, when rounded up, meets the minimum spacing requirement. Accordingly, Channel 240A can be allotted to Big Sur without removing service from Dos Palos or precluding competing applications.

Big Sur is a community of about 1,500 population located along scenic California Highway One, 27 miles south of Carmel, between the Santa Lucia Mountains and the Pacific Coast. It is a significant area for tourism and recreation, and is well-settled and established, with a variety of businesses, community outlets, services, and events.

For its counterproposal, Coyote proposes that the Commission authorize a first local service to Big Sur and retain the sole existing local service at Dos Palos. Both communities are eligible for allotment under Priority 3. KNTD's proposal for Chualar constitutes an additional service under Priority 4. Coyote's counterproposal is thus a

more efficient use of spectrum. If the Commission allots Channel 240A to Big Sur, Coyote will apply for authority to construct and operate facilities on the channel.

**Chualar Is Not A Community For Section 307(b) Purposes**

KNTD proposes to relocate Channel 240A to Chualar, a small farming town 10 miles south of Salinas, California. Chualar lacks the attributes of a community for purposes of the fair, efficient, and equitable distribution of radio service under Section 307(b) of the Communications Act of 1934, as amended. Rather, it appears that Chualar is a bedroom community to farming activity in Monterey County, and that its residents rely on the larger economic presence of nearby Salinas (2000 population 151,060).

Attached hereto as Exhibit B and incorporated herein by reference is the Declaration of Peter Mieuli, Vice President of Coyote, in which he observes, on the basis of a personal visit to Chualar, that the town appears to have a small post office, two non-denominational churches, and a public elementary school. The Main Street commercial district of Chualar consists of two small grocery stores, a Mexican deli, a taco stand, and a bar. Fire protection is the responsibility of the Salinas Rural Fire Department, which has one truck located in the town. Mr. Mieuli believes police protection is provided only by the Monterey County Sheriff's Department.

Mr. Mieuli's declaration includes several photographs of Chualar that graphically establish the modest, rural character of the town. Also attached is a printout of a map of Chualar, which is comprised essentially of three streets, Grant, Washington, and Lincoln, bisected by six cross-streets, to form a town of about a dozen city blocks.

In light of these facts, Coyote submits that Chualar lacks the attributes of a community for Section 307(b) purposes, and accordingly, that allotment of a channel to Chualar would be inconsistent with the Commission's statutory mandate.

### **A Tuck Showing Is Required To Consider A Chualar Allotment**

Mr. Turpie calculates that the KNT0 proposal for Chualar would result in 70 dBu service to fifty-seven percent (57%) of the Salinas, California, Urbanized Area (see Figure 3 to Exhibit A). This presents the threshold question whether Chualar is sufficiently independent of Salinas to merit any service preference. *Washington and Watkinsville, Georgia*, DA 01-2320 (MM Docket No. 01-281, released October 5, 2001). Accordingly, KNT0 must provide additional information responsive to a *Tuck* analysis.<sup>2</sup>

### **KNT0 Should Be Held To Its Dos Palos Commitment**

Only 18 months ago, KNT0 petitioned the Commission to reallocate Channel 240A from Livingston to Dos Palos.<sup>3</sup> There, KNT0 observed:<sup>4</sup>

Dos Palos is an incorporated community, governed by a Mayor and a four-member town council [sic], and which has its own fire, police, water, and sewer services. There are numerous businesses, churches, residential areas, clubs, and organizations located in Dos Palos. Moreover, the community of Livingston will continue to be served by Stations KLVN and KYCC, both of which are licensed to Livingston.

KNT0 provides no explanation why, nine months after the Commission reallocated Channel 240A from Livingston to Dos Palos, it was compelled to seek yet another

---

<sup>2</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>3</sup> KNT0, Inc., was formerly known as All American Broadcasting Company, which was the petitioner in MM Docket No. 00-92, RM-9857, to reallocate Channel 240A to Dos Palos from Livingston (petition filed March 20, 2000; Report & Order adopted October 11, 2000, released October 20, 2000). See notification regarding the licensee's name change, filed April 18, 2001, attached as Exhibit C.

<sup>4</sup> Petition for Rulemaking, MM Docket No. 00-92, at 2 (March 20, 2000) ("*Dos Palos Petition*").

reallotment of the channel from Dos Palos to Chualar. In the course of hop-scotching from Livingston to Dos Palos to Chualar, KNT0 has attempted a relocation of some 70 miles by leaping the Diablo Range, from the Modesto-Merced area in the San Joaquin Valley to Salinas in the Salinas Valley. Coyote submits that the public interest requires some explanation by KNT0 of its intentions and the factors that compelled it to invoke the Commission's FM allotment procedures on two occasions within the span of 18 months.

### **Waiver Is Not Warranted Regarding Removal of Sole Service**

In support of its proposal to reallot Channel 240A from Dos Palos to Chualar, KNT0 relies on prior Commission actions in *Glencoe and LeSeur, Minnesota*, 7 FCC Rcd 7651 (1992), and *Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (1995). The Commission noted that these precedents relied on a showing that no transmitter site was available. No such showing has been made here. Indeed, in KNT0's petition to reallot Channel 240A from Livingston to Dos Palos, KNT0 affirmatively stated:<sup>5</sup>

An actual transmitter site exists with respect to the proposed reallotment at which predicted full city-grade service can be provided to the new proposed community of license; the proposed reallotment will not result in the allotment being moved to an Urbanized Area; and the area that no longer will be served by KNT0 will continue to be well served, by at least five existing services.

In addition, Mr. Turpie concludes that transmitter site availability appears to be abundant at Dos Palos. See Figure 4 to Exhibit A.

Accordingly, no basis exists for the Commission to grant waiver in this case.

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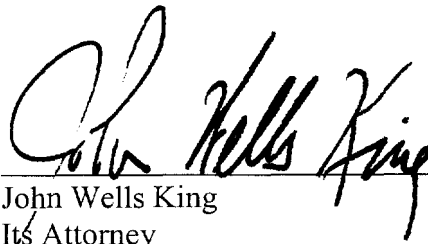
<sup>5</sup> *Dos Palos Petition*, at 2.

### **Conclusion**

The Commission should issue a Further Notice of Proposed Rulemaking consistent with Coyote's proposal herein, to provide first service at Dos Palos and Big Sur on Channel 240A. Allotment of Channel 240A at both communities is preferable and more efficient under Priority 3 than its allotment at Chualar (Priority 4). Coyote is interested in facilities at Big Sur.

Chualar is not a community for Section 307(b) purposes. Even so, an allotment there would require a *Tuck* analysis due to its projected service to Salinas. KNT0's commitment to Dos Palos, made only last year, should be enforced. Waiver regarding the removal of a sole local service is not warranted in this case.

**COYOTE COMMUNICATIONS, INC.**

By   
John Wells King  
Its Attorney

GARVEY, SCHUBERT & BARER  
1000 Potomac Street NW  
Fifth Floor  
Washington DC 20007  
Telephone: 202/965-7880  
E-mail: jking@gsblaw.com

November 13, 2001



## **Exhibit A**

### **ENGINEERING STATEMENT IN SUPPORT OF A COUNTERPROPOSAL IN RULE MAKING PROCEEDING NO. RM-10241, MM DOCKET NO. 01-248**

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Prepared by  
Lohnes and Culver    Washington, D.C.  
October, 2001

**ENGINEERING STATEMENT  
IN SUPPORT OF A COUNTERPROPOSAL  
IN RULE MAKING PROCEEDING NO. RM-10241,  
MM DOCKET NO. 01-248**

**INTRODUCTION**

This engineering statement was prepared on behalf of Coyote Communications, Inc. ("Coyote"). It supplies technical information in support of comments and a counterproposal in response to the Notice of Proposed Rule Making (NPRM) released on September 21, 2001 concerning the matter before the Commission in Rule Making Proceeding No. RM-10241, MM Docket No. 01-248 . The NPRM invites comment on a proposal initiated by KNTD, Inc. (the "Petitioner") to amend the FM Table of Allotments in Section 73.202(b) of the Commission's Rules for the deletion of Channel 240A at Dos Palos, California and the addition of Channel 240A at Chualar, California.

The Petitioner is the initial permittee of the unbuilt authorization for FM station KNTD, Channel 240A, Dos Palos, California, Facility I.D. No. 1009. The proposal described in the NPRM involves the removal of sole existing local service from the community of Dos Palos and constitutes an inefficient use of FM spectrum under Section 307(b) of the Communications Act. Coyote is submitting comments in opposition to the Petitioner's proposal in order to preserve local service at Dos Palos, California along with a counterproposal seeking the creation of a new allotment on Channel 240A at Big Sur, California.

## COUNTERPROPOSAL

Channel 240A can be allotted to the community of Big Sur in accordance with the Commission's FM minimum distance separations and transmitter location requirements in Sections 73.207 and 73.315 of the FCC Rules. The geographic coordinates of the proposed reference location for Big Sur are North 36° 15' 28" and West 121° 49' 28" (NAD 27). This reference location is 2.3 km west of the community of Big Sur due to a site restriction with the Dos Palos co-channel authorization for KNTD. Attached as Figure 1 is an allocation study demonstrating that the reference location is fully spaced with all FM stations and allotments, with the exception of the mutually exclusive proposal to reallocate Channel 240A from Dos Palos to Chualar. The reference location intended for the new allotment of Channel 240A at Big Sur and the associated 70 dBu contour derived from the maximum power and antenna height for Class A stations in Section 73.211 are plotted on the map of Figure 2. This map clearly shows that the community of Big Sur falls entirely within the 70 dBu contour.

The proposal to allot Channel 240A at Big Sur is non-mutually exclusive with the existing allotment of Channel 240A at Dos Palos. Spacing between the co-channel Class A allotments is 131.47 km, which exceeds the minimum distance separation requirement of 115 km. The location for the KNTD authorization at Dos Palos is separated from the reference location for Big Sur by 114.62 km and when rounded to the nearest kilometer also meets the 115 km limit. Therefore, Channel 240A can be allotted to Big Sur without removing service from Dos Palos or precluding competing applications.

The counterproposal entails first local service to Big Sur as well as the retention of the sole existing local service at Dos Palos. Big Sur and Dos Palos are communities eligible for allotment under the Commission's Allotment Priority 3 while the Petitioner's proposal adds an additional local service to Chualar under Allotment Priority 4. Consequently, the counterproposal involves two allotments of a higher priority than the single allotment proposed by the Petitioner, and thus the counterproposal constitutes a more efficient use of FM spectrum.

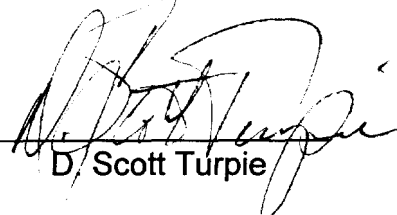
#### **OPPOSITION TO KNTD, INC. PROPOSAL**

The Petitioner has not sufficiently demonstrated that Chualar is a community that is eligible for an FM allotment. The proposal for a Class A allotment at Chualar results in 70 dBu service to 57% of the Salinas, California urbanized area (UA). Attached as Figure 3 is a map showing the location of the reference site and the 70 dBu contour for the Chualar proposal. Maximum power and antenna height for Class A stations in Section 73.211 was assumed to establish the location of the 70 dBu. Since coverage to the Salinas UA is in excess of 50%, the application of the eight Tuck Factors is required to demonstrate that the community of Chualar is not an interdependent community of Salinas. In the initial Petition for Rule Making, dated July 16, 2001, the Petitioner claimed that the theoretical 70 dBu contour contains only 2.2% of the Salinas UA, however, the percentage determination is misleading since the standard prediction method using terrain data was not used to calculate the location of the contour. Instead, the Petitioner incorrectly evaluated 70 dBu coverage using a 16 km radius derived from the FCC F(50,50) curves for 6 kW and 100 meters.

A waiver of the Commission's restriction on removal of sole existing local service is not warranted since there is no evidence of a transmitter site availability problem for Channel 240A at Dos Palos. The NPRM discussed the two proceedings cited by the Petitioner where the Commission previously granted reallocation of a community's sole existing local service. The Commission clarified that the reallocations in those cases were granted because the initial authorizations had not been built and there were no available transmitter sites. It was further implied by the Commission that those cases are not similar to the instant case since the Petitioner has not provided any information showing the unavailability of transmitter sites at Dos Palos.

Transmitter site availability appears to be abundant for Channel 240A at Dos Palos. A map attached as Figure 4 shows the areas available for a Channel 240A transmitter site to serve Dos Palos. This map also demonstrates that there is substantial flexibility in site selection under Sections 73.207 and 73.215 of the FCC Rules. Therefore, the removal of sole existing local service from Dos Palos should be prohibited and the Petitioner's request for reallocation of Channel 240A to Chualar should be denied.

Respectfully submitted,  
LOHNES AND CULVER



D. Scott Turpie

October, 2001

**FIGURE 1  
ALLOCATION STUDY  
RULE MAKING COUNTERPROPOSAL  
CHANNEL 240A AT BIG SUR, CALIFORNIA**

ANTENNA LOCATION COORDINATES: 36-15-28.00

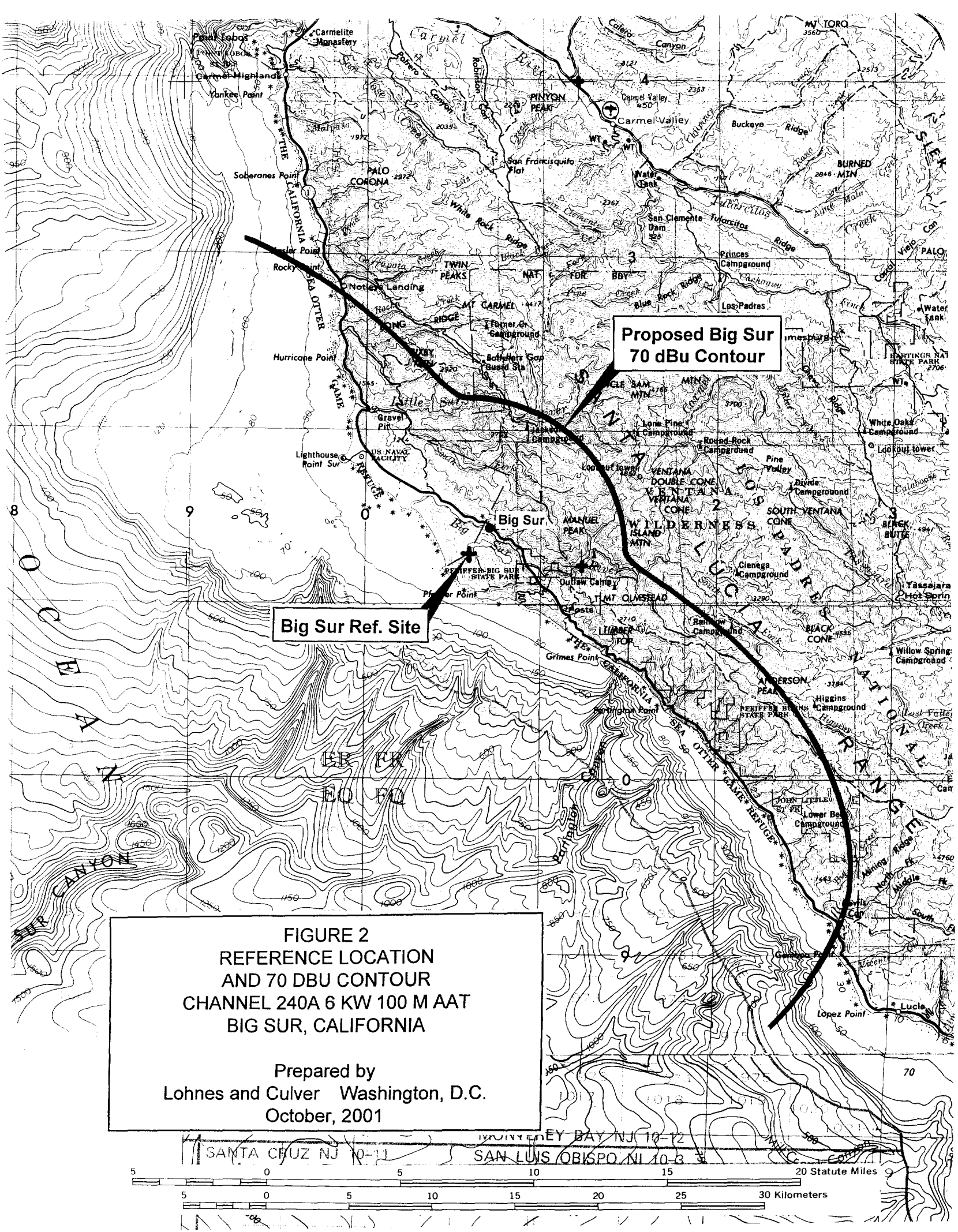
121-49-28.00 US

CALL STATUS	CITY STATE	CHANNEL CLASS	ERP-kw EAH-m	LATITUDE LONGITUDE	DIST-km <sup>(1)</sup> BEARING	REQUIRED-km <sup>(2)</sup> CLEARANCE-km
-----						
		237	No stations within required separation plus 50 km.			
KBOQ LIC	CARMEL CA	238 A	1.70 192	36-33-09.00 121-47-17.00	32.84 5.23	31 1.84
		239	No stations within required separation plus 50 km.			
KNTQ PADD	CHUALAR CA	240 A	6.00 100	36-34-54.00 121-26-34.00	49.45 43.16	115 -65.55 <sup>(3)</sup>
KNTQ CP	DOS PALOS CA	240 A	3.30-DA 135	36-55-35.00 120-50-42.00	114.62 49.26	115 -0.38
KNTQ ALC	DOS PALOS CA	240 A	6.00 100	37-04-03.00 120-44-52.00	131.47 46.45	115 16.47
KNTQ LIC	LIVINGSTON CA	240 A	3.00 93	37-18-57.00 120-43-20.00	152.99 39.44	115 37.99
KSQQ LIC	MORGAN HILL CA	241 A	4.70 49	37-11-01.00 121-48-09.00	102.73 0.94	72 30.73
KSLY-FM LIC	SAN LUIS OBISPO CA	241 B	3.40 514	35-21-37.00 120-39-17.00	145.02 133.14	113 32.02
		242	No stations within required separation plus 50 km.			
		243	No stations within required separation plus 50 km.			
		293	No stations within required separation plus 50 km.			
		294	No stations within required separation plus 50 km.			

<sup>(1)</sup> Calculated distance separation between stations in accordance with §73.208 of the FCC Rules.

<sup>(2)</sup> Required minimum distance separation between stations pursuant to §73.207 of the FCC Rules.

<sup>(3)</sup> Mutually exclusive proposal in MM Docket No. 01-248.

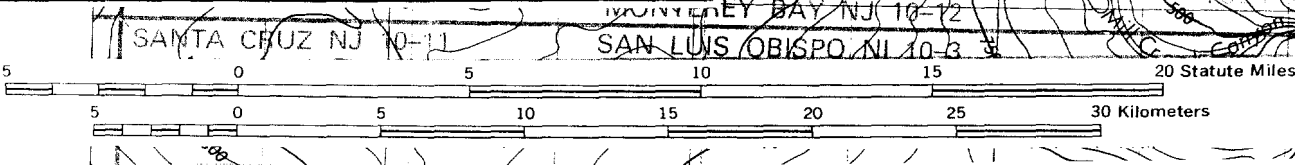


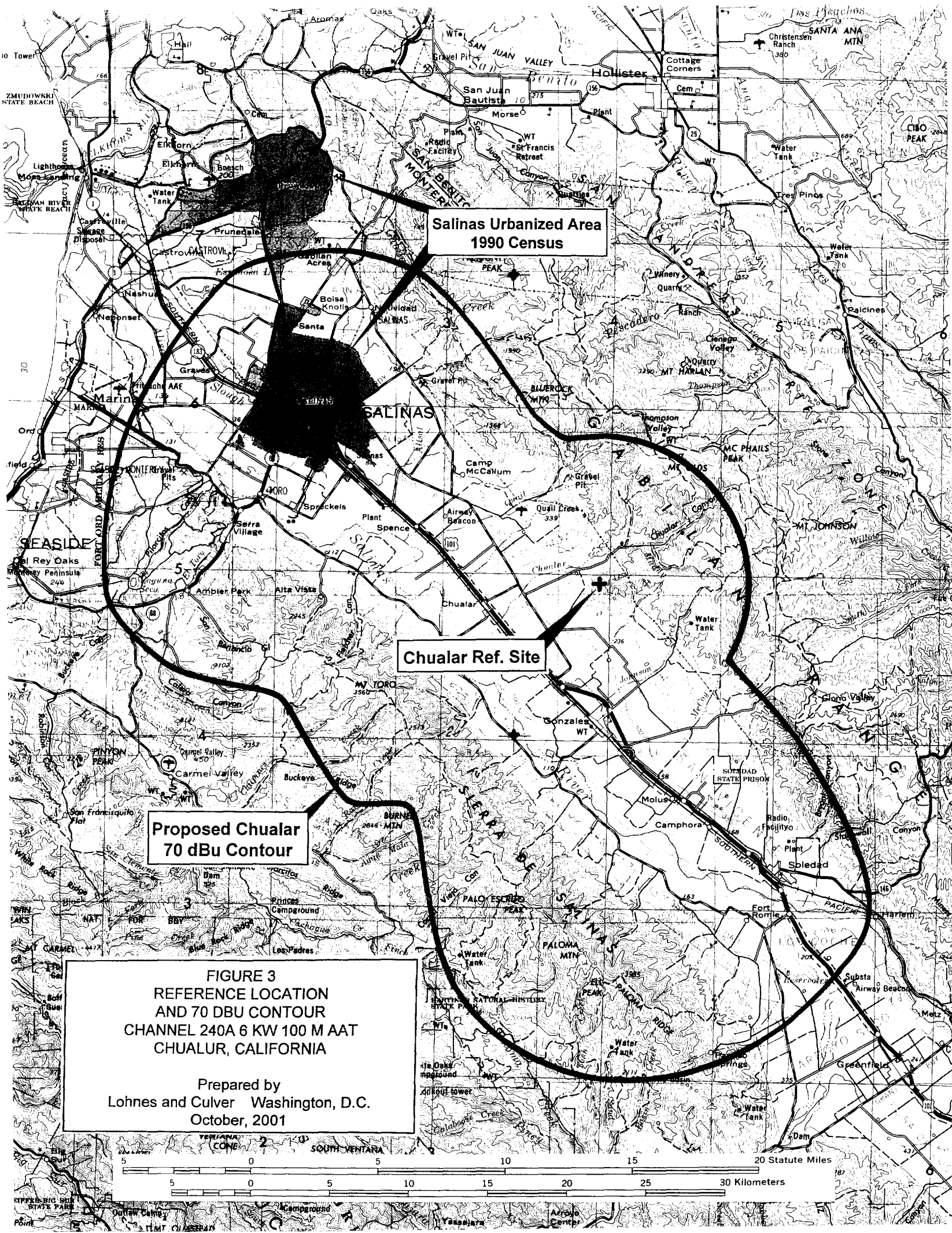
Proposed Big Sur  
70 dBu Contour

Big Sur Ref. Site

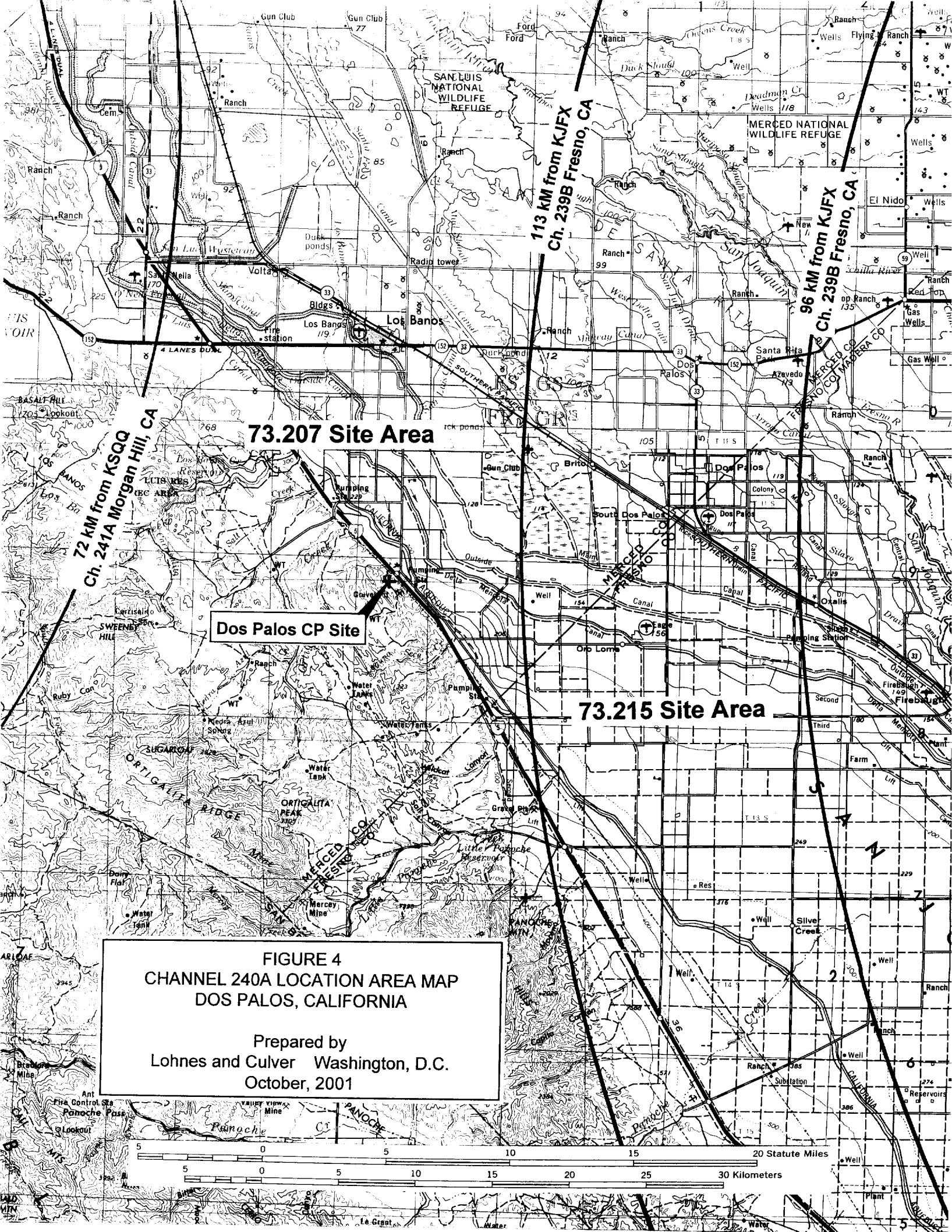
FIGURE 2  
REFERENCE LOCATION  
AND 70 DBU CONTOUR  
CHANNEL 240A 6 KW 100 M AAT  
BIG SUR, CALIFORNIA

Prepared by  
Lohnes and Culver Washington, D.C.  
October, 2001









**73.207 Site Area**

**Dos Palos CP Site**

**73.215 Site Area**

**FIGURE 4**  
**CHANNEL 240A LOCATION AREA MAP**  
**DOS PALOS, CALIFORNIA**

Prepared by  
Lohnes and Culver Washington, D.C.  
October, 2001

0 5 10 15 20 25 30 Statute Miles  
0 5 10 15 20 25 30 Kilometers

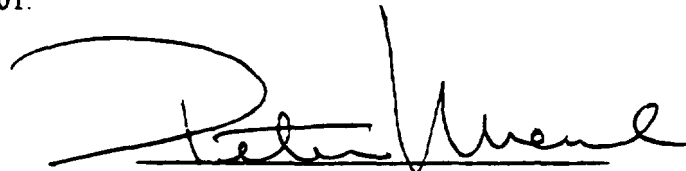
**DECLARATION OF PETER MIEULI**

I, Peter Mieuli, do solemnly state and declare the following:

1. I am Vice President of Coyote Communications, Inc.
2. On October 9, 2001, I personally visited the town of Chualar, California. I drove to Chualar from Salinas, the major nearby city, southeast down U.S. Highway 101. Chualar is about ten highway miles from Salinas. The region is rural and agricultural in character. Chualar, due to its close proximity to Salinas, would seem to be a suburb to the city, which is the agricultural and business center for Monterey County.
3. Chualar has a small post office, two non-denominational churches, and a public elementary school. The center of commercial activity, which is very modest, is Grant Street (U.S. 101) and Main Street. The commercial district appears to consist of two small grocery stores, a Mexican deli, a taco stand, and a bar. Fire protection is the responsibility of the Salinas Rural Fire Department, which has one truck located in the town. It would seem that police protection is provided only by the Monterey County Sheriff's Department.
4. Attached are photographs I took during my visit to Chualar. They consist of a view of the intersection of Main and Grant Streets, a view of portable housing, and a view of the commercial activity on Main Street.
5. Attached is a map of Chualar printed from *Yahoo! Maps*, provided by MapQuest.com, which shows that the town consists of about a dozen city blocks.
6. According to the Big Sur Chamber of Commerce, the population figure for Big Sur is one thousand five hundred (1,500). However, there is a belief at the Chamber that the population was undercounted during the 2000 Census because many of the residents live in remote areas.

I declare under penalty of perjury that the foregoing is true and correct.

Executed November 9, 2001.

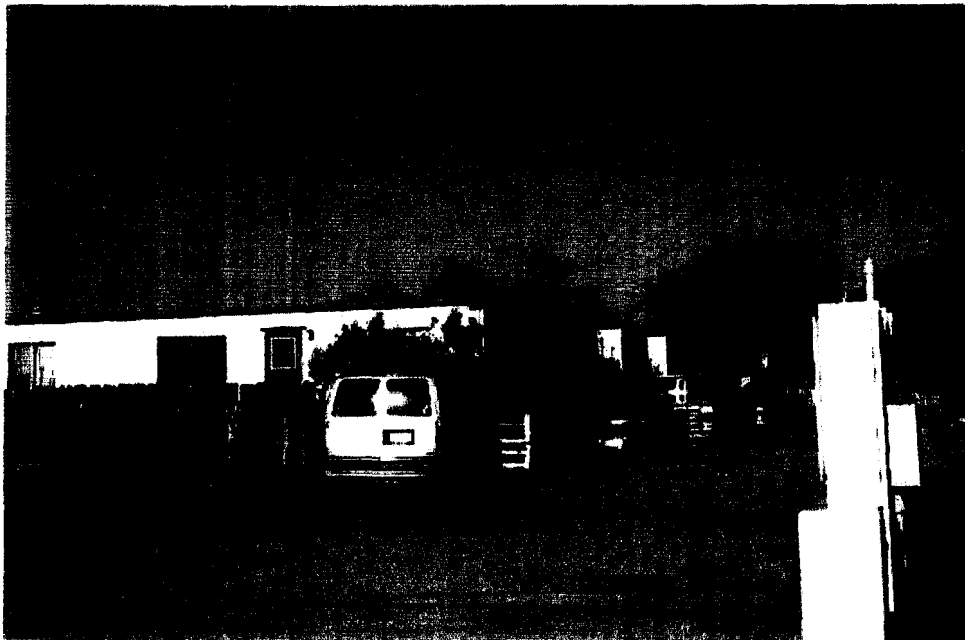


Peter Mieuli

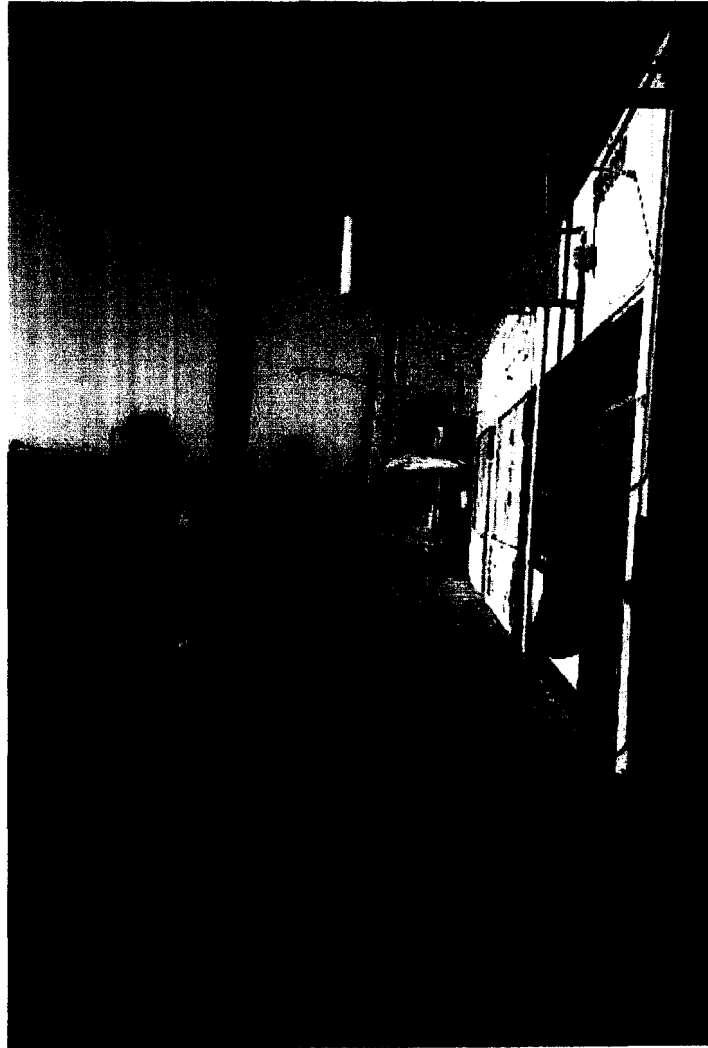


Intersection of Main St. and Grant St. (U.S. 101), Chualar, California.

Portable housing, Chualar, California



Main Street, Chualar, California.





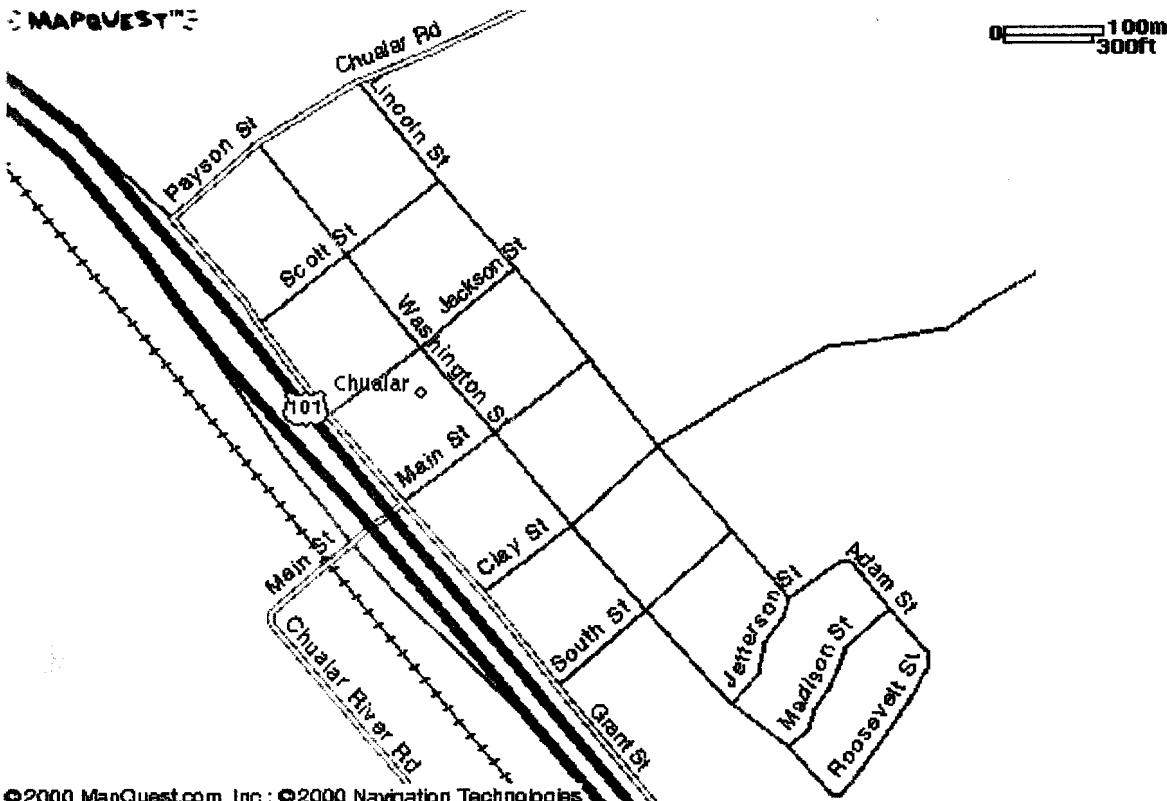
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## Yahoo! Maps

★ Chualar, CA

[Save This Address](#)

MAPQUEST™



Zoom In

1

[ 2 ]

[ 3 ]

[ 4 ]

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Zoom Out

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OFFICE OF THE SECRETARY

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The Law Office of

**Dan J. Alpert**

2120 N. 21st Rd.  
Suite 400  
Arlington, VA 22201

(703) 243-8690

(703) 243-8692 (FAX)

April 17, 2001

Ms. Magalie Romas Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

Re: Station KNT0(FM)  
Facility No. 1009  
Livingston, CA

Dear Ms. Salas:

Please update the Commission's records to reflect that the name of the licensee of KNT0(FM) has been changed from "All American Broadcasting Company" to "KNT0, Inc."

If there are any questions, please contact me.

Very truly yours,

  
Dan J. Alpert

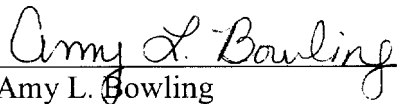
Counsel for KNT0, Inc. f/k/a All American  
Broadcasting Company

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached Comments and Counterproposal of Coyote Communications, Inc., was served this date, by U.S. Postal Service First Class mail, postage prepaid, or \*hand-delivered, upon the following:

Dan Alpert  
The Law Office of Dan J. Alpert  
2120 N. 21st Road  
Arlington, VA 22201

\* Kathleen Scheuerle  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
Washington, DC 20554

  
\_\_\_\_\_  
Amy L. Bowling

November 13, 2001